sub-loop elements. *See* Bell Atlantic 23-24. Indeed, AT&T (19) appears to request sub-loop unbundling as the self-appointed guardian for CAP and cable interests -- but those industry groups profess no desire to utilize sub-loop elements. *See* MFS 43; TCG 35; TWComm 45. In fact, NCTA (42) advises the FCC to "refrain from subelement loop unbundling ... unless there is a clear need ...." Against this background, the FCC should allow carriers to address requests for sub-loop unbundling in the context of negotiations, rather than making a general, insupportable finding that access to unbundled sub-loop elements is technically feasible.

Local switching platform. Any misconception that the unbundled local switching platform sought by LDDS is a network element has been dispelled by LDDS itself. As LDDS (43) explains, the "platform configuration ... represents the combined purchase of the basic individual network elements -- including loop, switch capacity and local termination -- necessary to provide local exchange and exchange access service." That is, LDDS wants to obtain all the components of local exchange and switched access service, without investing in any facilities of its own, at the cost-based standard for unbundled network elements rather than the wholesale pricing standard for resale. As an added bonus, LDDS would avoid paying access charges when it uses the platform as a substitute for switched access. This, the 1996 Act clearly does not allow. *See* GTE 37-38; Bell Atlantic 26; Sprint 38-39.

The local switching platform proposal also raises technical concerns. As NYNEX cautions (70), this approach engenders "operational and service quality difficulties resulting from the unmanageable contention for the shared and limited resources of the switch." Similarly, Bell Atlantic notes that:

> [t]here is no way to assign parts of the common software or other components of the switch to individual lines and no way to partition the switch to prevent one co-carrier whose use of the switch exceeds the "capacity" it purchased from interfering with the capacity available for another carrier, potentially degrading the service quality to the second carrier's customers. Bell Atlantic, Att. 3, at 14.

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and services, to the extent technically feasible and economically reasonable...." HPUC Docket No. 7702, Order, May 18, 1996 at 30-31.

The FCC accordingly should not identify the local switching platform as an acceptable outcome.

Dark fiber. Several parties claim that dark fiber should be considered an unbundled transport element. *See, e.g.*, ALTS 30; MCI 18 (inter-office trunks without electronics). Dark fiber is not a network element, however. The statute defines "network element" to include only those facilities that are "*used* in the provision of a telecommunications service." § 3(45) (emphasis added). Because ILECs do not use dark fiber in their networks -- transport circuits must be "lit" to be used -- dark fiber does not meet the statutory definition.

Access to data bases. MCI demands (32) that "all" ILEC data bases and signaling capabilities be unbundled, and includes (34) a "nonexhaustive" list of 24 data bases to which it "must have nondiscriminatory access via electronic bonding." As MCI recognizes, however, data bases fall into two categories -- "those that support call processing applications" and "those that support non-call processing applications." It is only the former category that can be considered network elements (and thus potentially subject to unbundling), since only data bases supporting call processing applications are "used in the transmission, routing, or other provision of a telecommunications service." § 3(45). MCI's request is therefore plainly over-reaching, as is evidenced by the far more limited requests for data base access of CLECs such as TCG (37). Like much of what the IXCs insist upon, it seems to be aimed at imposing undue burdens on ILECs, rather than obtaining capabilities that are necessary to effective local competition.

Access to the AIN. AT&T persists in claiming that access to the AIN, and, in particular, to AIN switch triggers, is technically feasible at this time. In essence, AT&T is advocating unmediated third party direct access to ILEC AIN switch triggers. As GTE (41-42) and numerous other parties have explained, however, such access without appropriate mediation would create serious network reliability and end user service integrity issues. Notably such cautions do not come solely from ILECs. TCG, for example, warned (37-38) that AIN unbundling "makes the ILEC switch vulnerable to inappropriate routing and/or billing instructions from the competitor's SCP, potentially leading to traffic congestion, routing of calls to

incorrect trunk groups, or incorrect billing records." Accordingly, access to the AIN switch triggers requested by AT&T is not technically feasible, and can not become so until the industry agrees on how mediation should be accomplished.[35]

MCI (35-37) mischaracterizes the work of the Information Industry Liaison Committee (IILC) Issue #026 Task Force on "Long-Term Unbundling and Network Evolution. This IILC issue identified logical interconnection points via industry presentations. The points in the Task Force report merely represent a shopping list of every possible interconnection location desired by non-ILECs; the report does not, contrary to MCI's implication, identify points that are considered technically feasible.[36] In fact, the IILC issue documentation discusses several technical, operational, and standards issues, which need to be resolved before interconnection at these points in a multi-provider environment can be accomplished.

The Industry IN Project discussed in GTE's comments is a good faith effort to address and resolve the AIN access issues being raised by AT&T and MCI. This Project is a necessity, not a delaying tactic, given the considerable risks inherent in unmediated third-party access to AIN features.[37] While this Project continues its work, GTE has offered to collaborate with third parties in jointly developing and testing AIN services via ILEC platforms, for use by those parties in providing service to their end users. Thus, there is no need for the FCC to rush to judgment on AIN issues in this docket, and doing so would be imprudent.

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35 For an itemized rebuttal of AT&T's claims that mediation is unnecessary, *see* the letter from Sandra L. Wagner, Director-Federal Regulatory, SBC Communications, Inc. to Regina Keeney, Chief, Common Carrier Bureau, dated May 23, 1996 (*ex parte* submission in CC Docket No. 91-346, filed on behalf of GTE, Bell Atlantic, PTG, and SBC).

36 Nine ILECs, including GTE, recently filed an *ex parte* in CC Docket No. 91-346 that rebuts in detail MCI's claims (made in a earlier *ex parte* in that docket) that the IILC project supports the technical feasibility of unmediated third party access. *See* Letter from Sandra L. Wagner, Director-Federal Regulatory, SBC Communications, Inc. to Regina Keeney, Chief, Common Carrier Bureau, Dated May 22, 1996, at 2-4 (Joint LEC AIN Letter).

37 As the Joint LEC AIN Letter explains (at 1), "[c]ooperative industry-wide efforts, such as the IN Project's proposed laboratory tests and field trials, represent the only means to obtain, in a timely manner, the information necessary to make intelligent and rational decisions regarding logical interconnection arrangements."

Access to Operational Support Systems. AT&T (36-38), MCI (18, 34) and TCG (38-39) ask the FCC to require unbundled electronic access to ILEC systems for order processing, provisioning and installation, trouble resolution, maintenance, customer care, service quality monitoring, recording, and billing. OSSs do not have to be unbundled, because they do not fall within the definition of "network element," because they are neither "a facility or equipment used in the provision of a telecommunications service," nor "features, functions, and capabilities that are provided by means of such facility or equipment. . . or used in the transmission, routing, or other provision of a telecommunications service." § 3(45). Nonetheless, GTE provides third parties with electronic access to some OSSs through a gateway today,[38] where standards exist, and it is willing to do the same for any CLEC on non-discriminatory and compensatory terms. GTE also is willing to provide access to additional OSSs on either a tariffed or contractual basis, once standard interfaces have been developed and any security concerns have been adequately addressed through gateways or other equally effective means.[39]

4. Federal Rules Regarding Just, Reasonable, and Non-Discriminatory Access to Unbundled Elements Are Unnecessary, And Those Proposed By Certain Commenters Are Intrusive and Over-Reaching.

MCI's comments (22-23) include a table entitled "Minimum Requirements To Ensure Nondiscriminatory Access to Unbundled Elements, Interconnection, Collocation, and Resale" that contains 27 separate requirements, consumes two full single-spaced pages of small type, and apparently is intended to be included in mandatory national rules. The proposed requirements cover everything from

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[38] For example, GTE is a participant in an industry effort to develop specifications and implement "electronic bonding" between access customers and ILECs. To date, GTE is providing electronic bonding for Trouble Administration to AT&T and MCI, and it is developing similar access for Sprint. GTE has agreed to pursue electronic bonding for primary interexchange carrier orders for AT&T and MCI. Further, the industry is currently building specifications for electronic bonding for the ordering of access services. Moreover, GTE has discussed various electronic methods for placing orders for resold local exchange services with AT&T, but has yet to reach an agreement. The industry standards process therefore works, and FCC intervention is neither necessary nor advisable.

[39] To its credit, TCG (39) recognizes the need for industry-developed national standards to facilitate electronic access. Similarly, AT&T properly acknowledges (36 n.45) that the electronic interfaces

timing of availability for services provided under § 251 ("immediately") to Ordering, Provisioning, and Installation (8 separate requirements); Billing; Customer Account Record Exchange and Account Maintenance (5 separate requirements); Maintenance; Access Billing; and Information. LDDS (38-39) makes similar demands, and TCG (34) asks for minimum national performance characteristics and installation and repair intervals, with penalties for non-compliance.

Some (though by no means all) of what these parties ask for is reasonable, and indeed, is already provided by GTE. What these parties fail to recognize, however, is that national rules on these and similar matters are not authorized by the statute, and are not necessary or appropriate. To reiterate, the 1996 Act is intended to be "deregulatory." Surely, Congress did not intend that FCC rules would govern such minutiae as the format and frequency of billing data, the availability of seven-day-per-week, 24-hour-per-day support, and the provision of reports to interconnecting parties regarding the average length of outages and percentage of call failures for ILEC vs. CLEC customers. These matters can and should be dealt with in the negotiation process; formalizing them by adding pages upon pages to the Code of Federal Regulations would be government micro-management of the highest order.

Finally, the absence of federal standards will enable state PUCs to resolve any disputes that do arise with appropriate sensitivity to local conditions. As the CPUC (27) noted:

> the provisioning systems of LECs vary considerably by company and by region. As the CPUC is discovering ... rules from other regions do not always mirror how LECs in California may operate their networks. Even within California, the two largest incumbents display significant differences in how they provision and operate their networks. The CPUC believes that states are best situated to determine the terms and conditions for unbundled network elements appropriate to the unique circumstances faced in their respective jurisdictions.

The same analysis holds true with respect to standards for just, reasonable, and non-discriminatory interconnection, collocation, and resale.

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should involve gateways rather than direct access by a CLEC into an ILEC's system, and that national standards should be developed by industry standards bodies (37-38).

E. Resale (*NPRM* Parts II.B.3 and II.C.1)

The IXCs seek to rewrite the 1996 Act's resale provisions in order to reinsert requirements that Congress intentionally deleted and vest the FCC with authority to manage ILEC business operations. Their most egregious efforts in this regard relate to calculation of avoided costs for purposes of establishing wholesale prices under § 251(c)(4). AT&T (82-85) claims that discounts that are insufficient to permit "economically viable" resale violate the 1996 Act, asserts that states should be free to require additional discounts beyond avoided cost, and interprets "avoided" to mean "avoidable." MCI (93) contends that ILECs would enjoy an anticompetitive advantage if wholesale rates exceeded TSLRIC.[40] And LDDS (83-86) proclaims that all retail-related costs must be excluded, not just those actually avoided.[41]

Each of these arguments is blatantly at odds with the 1996 Act. In adopting the avoided cost standard, Congress removed a requirement that would have guaranteed resellers "economically feasible rates." AT&T therefore is entitled to no sympathy for its inability to be a successful reseller in Rochester

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[40] MCI also attaches a "study" purporting to establish that ILEC avoided costs range from 25 to 33 percent. MCI, Attachment 2, J. Christopher Frentrup, "*Pricing of Wholesale Services.*" This study, however, is rife with mistaken assumptions and analyses. For example, it removes the total expense associated with marketing and billing and collection, not just the "portion thereof attributable ... to costs that will be avoided ..." as required by § 252(d)(3). In reality, accounts 6611 through 6623 are not limited to retail expenses they also include expenses associated with providing intermediary services to IXCs and other entities that obtain GTE services for ultimate sale to their own end users. The study also ignores the fact that GTE and other ILECs will incur additional costs in providing services for resale, and improperly removes costs such as Large Private Branch Exchange and Public Telephone Terminal Equipment Expenses; these are expenses of doing business, which do not disappear when a wholesale offering is made. Likewise, the study errs in removing a portion of overheads, since these are general business costs that will continue to be incurred, and therefore are not "avoided." The study accordingly lacks any merit and should be disregarded.

[41] Remarkably, CompTel (98-99) suggests that avoided costs on the order of 50-80 percent might be appropriate, citing the spread between retail and discounted long distance rates. This argument is simply a testament to the artificially high profits available in the less than fully competitive long distance market. In reality, evidence GTE has submitted in California demonstrates net avoided costs that, when compared the current retail rates, would produce percentages between 4.5 and 15.2 percent for various services. *See* Attachment 2. The validity of these results is confirmed by the fact that they are nearly identical to those reported by United Telephone in Tennessee (*see* Attachment 1 to Sprint Comments).

(82 n.124), as Congress recognized, forcing ILECs to subsidize resellers is anathema to fair and efficient competition. *See* H.R.1555, proposed 47 U.S.C. § 242(a)(3). Moreover, the avoided cost standard means what it says: the only costs to be removed from retail rates are those "that will be avoided" by the ILEC. § 252(d)(3); *see also* Conf. Rpt. at 126. Neither the FCC nor the states can require a greater discount or direct that costs not actually avoided be ignored in setting wholesale rates. *See, e.g.*, MFS 73; TCG 56.

The IXCs likewise seek to deny ILECs the ability to recover additional costs associated with making services available for resale,[42] and to compel them to remove a portion of joint and common or overhead costs. *See* AT&T 84; MCI 90; LDDS 86. As numerous parties point out, however, any incremental costs incurred in making services available for resale must be offset against cost savings to arrive at actual avoided costs.[43] Similarly, a multitude of commenters, including CLECs, recognized that joint and common costs by definition are not avoided when providing a service for resale. *See* MFS 74; TCG 56.[44]

In addition, certain IXCs seek to define the resale obligation as broadly as possible, so that below-cost services would not only have to be made available for resale, but subject to a discount. LDDS 87; MCI 85-86.[45] As GTE explained (45-46), however, mandating resale of below-cost services would deter

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[42] At the same time, these parties urge the FCC to require ILECs to make new operational interfaces available to facilitate resale, but notably do not commit to pay for the extra costs involved. AT&T 80-81; MCI 88-89. As discussed above, GTE will make electronic access to certain support systems available on a compensatory basis.

[43] The CPUC (38), for example, noted that "[t]he concept of net avoided costs appears to provide an accurate estimate of actual costs avoided by the incumbent in wholesale provisioning of the service." *See also* MFS 74 (providing examples of costs of making service available for resale); TCG 57; TWComm 77-80.

[44] GTE also agrees with MFS that the 1996 Act requires avoided costs to be determined on a service-specific basis (so that across-the-board discounts are impermissible), and that regulators should view mandated wholesale discounts as an interim measure pending development of facilities-based competition. MFS 72n.80; *see also* Cox 32; NCTA 29 (deep wholesale discounts would thwart Congress's desire for facilities-based competition).

[45] ALTS (38) goes even farther, asserting that fair competition requires prices for the unbundled network elements comprising below-cost services to be discounted by the amount of the subsidy for the service. Such a rule would plainly contravene the network element pricing standard in § 252(d)(1), which requires rates to be based on cost (plus a reasonable profit).

facilities-based competition and aggravate cost recovery problems; pending rate rebalancing, therefore, such services should not be subject to mandated resale, or as a minimum, should not be further discounted. The Oregon PUC (31) also cautioned that mandatory resale of subsidized services should be prohibited, because "incorrect economic signals as to the cost of subsidized services would then lead to the possibility of uneconomic investment."[46]

Other interpretations urged CLECs, including prohibitions or restrictions on the ability of ILECs to discontinue offerings or discontinue resale of grandfathered services (*e.g.*, AT&T 76-78; MCI 88; CompTel 101-102), would unduly interfere with legitimate business decisions that must be left up to each ILEC. Grandfathering is a common practice in the interexchange market, where AT&T and MCI routinely include narrow windows of availability in their contract tariffs, and it is essential to avoid disruption to existing customers when services become incompatible with marketplace requirements.[47] Withdrawal of offerings is also commonplace, and is necessary to avoid being saddled with obsolete technology.[48] These practices accordingly are not "unreasonable or discriminatory," and should not be proscribed or constrained.

Similarly, several parties contend that promotional and discount plans must be subject to resale at wholesale rates. AT&T 82-83; CompTel 100-101; DOJ 55. Reasonably circumscribed promotional plans should not be subject to resale at all, in order to preserve ILEC incentives to offer such plans and stimulate additional competition.[49] GTE 50 *see also* BellSouth 66; USTA 72; CPUC 36. GTE does not object to

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46 *See also* Florida PSC 37 (it would be inappropriate to require resale of below-cost services); PTG 89-90 (discounting of below-cost services would be confiscatory).

47 GTE agrees with SBC (73) that any reseller customers should be grandfathered, subject to the same conditions as end user customers.

48 As GTE (48-49) pointed out in its comments, some increased incidence of withdrawals should be expected, given the pressure placed by new competition on uneconomic (but previously mandated) rate levels and relationships

49 Any concerns that ILECs could use such an exclusion to undermine resale, *see* DOJ 55, can be ameliorated by imposing a reasonable time limit (e.g., 120 days) on promotions, as suggested by Ameritech (56-57).

making discounted rate plans available for resale, but does not agree that the statute requires further discounting of such plans, because they are not themselves "services" and any further discounts would be uneconomic. GTE 49-50.[50] As TWComm (73) explained:

> The fact that the [wholesale] requirement is applicable to every service, rather than every rate charged for each service, is significant. ... If every discounted or promotional rate were to be made available at wholesale rates for resale to telecommunications carriers, the result would be a proliferation of resold service offerings at rates well below any reasonable measure of cost of providing service. Mandatory availability of below cost services to end users was not Congress's intent in formulating the resale requirements of Section 251(c)(4).

Finally, the record makes clear that class-of-service restrictions and reasonable restrictions designed to protect against stranded investment are consistent with the 1996 Act. *See, e.g.,* GTE 49, 51; Bell Atlantic 45; PTG 90; SBC 69-70. Likewise, ILECs must be permitted to protect proprietary technology, GTE 51, and need not modify or customize service offerings for the benefit of resellers. *See* Ameritech 54-55; NYNEX 73.

F. Reciprocal Compensation (*NPRM* Part II.C.5)

The 1996 Act plainly requires that reciprocal compensation arrangements be negotiated between the parties. In the event the parties cannot agree, and only in that event, the statute authorizes a *state PUC* to establish compensation rates based on a reasonable approximation of the additional costs of transport and termination of traffic. §§ 251(b)(5), 252(d)(2). Nonetheless, several IXCs and CLECs contend that detailed federal rules must be adopted to define local calling areas and specify minimum or maximum numbers of points of interconnection, *see* ACSI 18-20; MCI 42-44, and to establish rate structures and pricing standards for transport and termination (including mandatory bill and keep either on an interim basis or under certain circumstances). *See* AT&T 66-68; MCI 51-53; TCG 67-80. These requests are entirely inconsistent with the statute.

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[50] GTE also agrees with the CPUC (36) that discount plans "should be available for resale to the same class of qualifying customers" and that "[i]t would be inappropriate if the new entrant could resell business toll plans with call threshold volume requirements to low volume residential customers."

Congress prudently left the particulars of traffic exchange agreements to individual negotiations, because no general rule could encompass the variety of local calling areas and network architectures throughout the country. As GTE explained (54), the parties should be free to establish whatever local calling area they want for pricing purposes (subject to any state requirements), and to negotiate different-sized local calling areas for compensation purposes if doing so serves their business needs. In its own negotiations, GTE has not found such matters as the definition of a "local" call or the location of points of interconnection to be particularly contentious. Consequently, uniform federal requirements, in addition to being unauthorized by the 1996 Act, are unwarranted.

Rate structure issues should likewise be left to private negotiations. The symmetry rule requested by several parties violates the requirement in § 252(d)(2) that rates be based on a reasonable estimate of the additional costs of transport and termination. Because the costs of each carrier almost certainly will differ, a mandated symmetry requirement -- as opposed to a voluntary agreement to employ symmetrical rates -- is inconsistent with the statutory standard.[51] Similarly, a rule prohibiting ILECs or CLECs from establishing separate rate elements for transport and termination, or charging differently for traffic handed off at a tandem instead of an end office, cannot be reconciled with § 252(d)(5).[52]

Rate levels also are up to the states (if the parties invoke arbitration). As the Texas PUC pointed out (33), any generic pricing methodology or ceiling could not be suitable to all states. Nor would federal

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[51] As USTA points out (82), a mandated symmetrical rate would distort the market by interfering with efficient, cost-based pricing signals. Indeed, this seems to be the result desired by carriers such as MCI (49-51). On the one hand, MCI asserts that ILECs have inflated costs due to inefficient technology; on the other, it claims that symmetrical transport and termination rates create proper incentives by rewarding the more efficient carrier. In plain English, MCI is asking for a handout.

[52] MFS accordingly is wrong in suggesting (76-77) that different rates for tandem and end office termination are inherently non-reciprocal. Reciprocity must be related to the architecture employed by each carrier; if a CLEC uses tandem switches, then it, too, could seek through negotiations to collect different rates. Traffic hand-off at the tandem imposes different costs on the terminating carrier than traffic hand-off at the end office, and the statutory pricing standard assures recovery of the costs incurred. *See* Bell Atlantic 43.

proxies be appropriate, as explained by the CPUC (41), due to significant variations in access charges among the states.

In addition to misreading the jurisdictional issue, the IXCs and CLECs seriously mischaracterize § 252(d)(2) in two respects. First, that provision does not mandate the use of TSLRIC cost studies in establishing reciprocal compensation rates. *See, e.g.*, AT&T 69, NCTA 54. Second, the "additional costs incurred" language undermines the contention of some parties that cost studies must assume the most efficient technology available. States must recognize that costs are incurred using actual network technology, not a theoretical network.[53]

Finally, as GTE explained (56-59), Bill and Keep may be agreed to voluntarily and, in those rare circumstances in which it would actually "afford the mutual recovery of costs" (§ 252(d)(2)(B)(1)),[54] may even be imposed by a state commission, but it can never be imposed by the FCC. TCG's claim (71) that Bill and Keep "is affirmatively endorsed by the 1996 Act" conveniently overlooks the fact that section 252(d)(2)(B), far from embracing Bill and Keep, permits it only under narrowly circumscribed conditions. The FCC cannot and should not mandate Bill and Keep.

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[53] In this regard, TCG is mistaken in asserting (81) that interconnection by CLECs will impose few additional costs, based on the assumption that the terminated traffic will all be diverted from the ILEC, and that the ILEC's network is sized for peak capacity. Contrary to TCG's claim, the ILEC's costs will certainly increase. In a typical medium-to-large city, an ILEC will have a grid of switches, the locations of which are a function of cost trade-offs between switching (and inter-office trunking) and loop plant. A CLEC, in contrast is likely to have only one or two switches serving its customers in the same overall territory. As the CLEC gains customers and routes their traffic through its fewer switches, the traffic pattern of the combined networks will change. The ILEC's network was sized to handle the traditional traffic loads generated by its grid of switches, but the CLEC will be originating and terminating traffic at a more centralized point. This will increase the traffic load at the ILEC switches where the CLEC interconnects, increasing costs at those locations but not producing offsetting savings elsewhere.

[54] Thus, contrary to the suggestion by the CPUC (45), Bill and Keep is not authorized any time that "traffic exchange is in balance." The costs of each party must also be in reasonable balance.

III. ANY FCC PRICING GUIDELINES MUST ASSURE RECOVERY OF JOINT AND COMMON COSTS. (*NPRM* Part II.B 2.d)

Several parties with varying interests in this proceeding, such as MFS, USTA and the Texas PUC, agree with GTE that the statute does not permit the FCC to adopt rigid national pricing standards.[55] Rather, the 1996 Act contemplates that rates for interconnection, collocation and network elements[56] will be negotiated in the first instance by interconnecting parties, and will be determined by state PUCs (or the FCC if the state fails to act) only if arbitration is needed. Parties that urge the FCC to dictate uniform nationwide pricing requirements impermissibly ignore the statutory framework. GTE accordingly reiterates its call for the FCC to identify ranges of acceptable outcomes for § 251 pricing purposes, which afford ILECs a reasonable opportunity to recover their costs. As discussed below, these acceptable outcomes should not include rates limited to TSLRIC.

A. TSLRIC, Standing Alone, Is an Inappropriate and Confiscatory Pricing Standard.

Notably, many of the parties advocating inflexible federal pricing standards also contend that interconnection, collocation, and network element rates must be set no higher than TSLRIC. *See* ALTS, Montgomery Affidavit 24; CompTel 71. These commenters assert that it would be economically inefficient for new entrants to have to shoulder a portion of the common costs of the ILECs, when they have to recover their own common costs as well. This position is indefensible. New entrants are purchasing services or unbundled features from ILECs, not simply reimbursing them for estimated long-run incremental costs. Accordingly, the argument raised by ALTS and CompTel is the equivalent of saying that when General Motors buys tires from Goodyear as a component of a car, GM should not have to pay Goodyear a price that covers any of Goodyear's common costs, since GM has common costs to recover as well. Alternatively, such a statement might be viewed as saying that all common costs of the ILEC

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55 GTE 3-5, 59; Texas PUC 21 26-27; USTA 37; MFS 6.

56 There is virtually no dispute on the record that the statutory pricing standard for interconnection, collocation and network elements is the same. There is also widespread agreement that rate deaveraging should be allowed. *See, e.g.*, GTE 60 n.87; AT&T 60; Sprint 50.

should be recovered from its retail offerings; or, as in the tire example, that Goodyear should recover all its common costs from its retail customers. Neither approach is economically correct, and both would assure the proliferation of inefficient competitors, while simultaneously stifling effective competition. Moreover, as explained by GTE and several other parties -- including some CLECs -- prices limited to TSLRIC will not permit an ILEC to remain profitable, because TSLRIC fails to recover total costs. *See, e.g.,* Ameritech 62-70; MFS 54; NCTA 50; USTA 39-40.[57] For this reason, TSLRIC-based pricing, standing alone, would be an unconstitutional taking of ILEC property. GTE 66-71; U S WEST 24-35.[58]

AT&T (46-52) suggests that the shared and common cost problem is insignificant and that pricing based on TSLRIC should be sufficient to recover the ILEC's reasonable common costs. For example, AT&T (62) states:

> "Common costs" do not, as some contend, present an intractable problem with TSLRIC pricing. Properly defined, the vast majority of relevant costs are causally attributable. ... Indeed, at least at the level of the four basic network element groupings of loop, switching, transport, and signalling, virtually all costs should be causally attributable, because each of these natural groupings is comprised of a discrete set of physical elements of the local network.

It may be true, although it has certainly not been proven, that if an ILEC could compute four generic TSLRICs (one each for loop, switching, transport, and signaling) that the sum of those TSLRICs might approach its total *forward-looking* long-run costs.[59] As AT&T's own economists point out, however, AT&T's analysis quickly breaks down at the level of unbundling sought by AT&T and other IXCs:

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[57] The proposed "narrowly defined" imputation rule, in which the prices of network elements would be limited so that they could not, in aggregate, exceed the retail price of the service they comprise, is likewise economically unsound and confiscatory. It fails to take into account the additional costs of providing unbundled network elements and ignores the fact that some retail rates are below cost. Ameritech 83-85; Florida PSC 38; GTE 64-65. In addition, the proposed imputation rule overlooks the "economic costs" (opportunity costs) to the ILEC resulting from offering unbundled network elements.

[58] AT&T attempts to argue (70-71) that TSLRIC would not be a taking because competition, not government fiat, will cause LECs to be unable to recover their costs. This is flatly wrong: the shortfall would result from noncompensatory interconnection rates adopted under the auspices of a federal statute, not from competition.

[59] Such an exercise would not, of course, assure recovery of prudently incurred embedded investment or of overhead (e.g., administrative buildings, vehicles, and the like).

> At a finer level of disaggregation, there may well be non-trivial costs shared among various subcomponents of any particular aggregative network element. The competitive price for any such subcomponent must be between the subcomponent's unit long run incremental cost and [stand-alone cost]. The revenues from the competitive prices of all the subcomponents of an aggregative network element must sum to the long run incremental cost of the aggregative network element.[60]

In other words, AT&T's own economists properly recognize that as more subcomponents (unbundled elements) are created more costs that were directly attributable to the aggregative network element grouping will become common or shared costs; for ILECs these costs cannot be disregarded. AT&T's economists also acknowledge that these common or shared costs should be recovered through the pricing of the subcomponents In essence, they concede that when common or shared costs exist, the prices of the subcomponents should be TSLRIC *plus* some level of contribution, so that all common and shared costs are recovered. This of course, is precisely GTE's position.

B. The Hatfield Model is Significantly Flawed and Cannot Be Used to Estimate Costs of Interconnection and Network Elements.

AT&T, MCI and others claim that a model prepared by Hatfield Associates demonstrates that the vast majority of costs will be captured in TSLRIC, and that ILECs should not be permitted to recover the remainder.[61] An earlier version of the Hatfield Model was presented in California. In the California proceedings, GTE demonstrated that key inputs used by the model in determining network investment -- costs for switches, pair gain devices, and placement of cable, as well as the associated utilization factors -- are inconsistent with what actually occurs in the real world. It appears that the inputs underlying the latest version are no more realistic.

The major changes to the model consisted of modifying user inputs, rather than addressing the fundamental problem -- the model's algorithm. The move from a "scorched earth" to a "scorched node"

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[60] AT&T Appendix C, Affidavit of William J. Baumol, Janusz A. Ordover, and Robert D. Willig (Baumol-Ordover-Willig Aff.), at fn. 1 (emphasis added).

[61] Hatfield Associates, Inc., *The Cost of Basic Network Elements: Theory, Modeling and Policy Implications*, March 1996 (Attachment 1 to MCI) ("Hatfield Model").

concept, along with the other minor changes, does not make the Hatfield Model a reliable indicator of the ILECs' TSLRIC. The most recent version continues to assume that any forward-looking costs should be based on a hypothetical "optimum" network for which demand is known and static,[62] this network will be narrowband only,[63] and customers are uniformly distributed throughout each geographic serving area.[64] Moreover, the end office switch costs are based on a melange of switch types.[65]

The gap between the costs actually incurred by ILECs and those produced by the Hatfield model is directly attributable to shortcomings in the model.[66] Thus, although the Hatfield Model standardizes cost assumptions, it does so at the expense of the model's very integrity and utility. Ignoring the ILECs' proven -- and in some cases, regulatorily mandated[67] -- investment decisions in order to artificially force down interconnection prices would be both bad policy and anticompetitive. The correct costs to use are those that a firm actually will experience given the mixture of current and future technologies. Ameritech 63-64, 68-70; USTA 47; U S WEST, Harris and Yao Affidavit 18-20.

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62 In reality, as new entrants move from resellers to becoming facilities-based carriers, demand in many offices is likely to decline. By assuming constant demand, therefore, the Hatfield Model effectively would ensure that the ILECs' TSLRIC will be increasingly understated over time.

63 In an environment where more and more network-based services are requiring broadband transmission capabilities, it is difficult to understand why Hatfield limited the model to narrowband only.

64 Geographic serving areas are not uniformly shaped and are not necessarily served by the closest end office. Terrain, and particularly impassable terrain such as swamps, lakes, rivers, and mountains, often dictate how customers are served. The Hatfield Model ignores these real-world situations.

65 The switch costs in the Hatfield Model no not reflect a particular switch type either offered by vendors or in place in ILEC networks. Further, the ILECs' networks are made up of many types of digital switches that will continue to be fully functioning switches capable of additional growth and of meeting the demand placed on them. The Hatfield network ignores the fact that it is often less expensive to add to existing digital switches rather than to replace them with newer versions.

66 This gap between theory and reality is further exacerbated by the use of factors from completely different industry segments -- *e.g.*, airline and automobile manufacturing -- to estimate overheads. Telephone industry overhead expenses reflect an entirely distinct operating environment, and using the Hatfield Model accordingly grossly underestimates both the costs that a competitive entrant will incur and those already incurred by ILECs.

67 *See* Texas PUC 8: "PURA95 specifies timelines for the installation by incumbent local exchange carriers of digital technology and Common Channel Signaling 7 (SS7) capability." (Footnote omitted.)

In addition, Hatfield (37-44) argues that $3.8 billion in industry-wide ILEC costs should not be recovered. This argument is insupportable. First, Hatfield speculates that a significant amount of these costs were incurred to build capacity in anticipation of competition. It provides no evidence of this, however, and the supposition is patently absurd. Second, Hatfield asserts that the costs of installing broadband networks should be excluded. Although some of this investment should properly be allocated to non-telephone ventures, broadband facilities are increasingly essential to assure adequate capacity and throughput for high traffic geographic areas and for high-density traffic, such as data transmission and Internet access. Finally, Hatfield argues that corporate overheads should not be recovered from interconnectors except where it can be proven that these costs vary with levels of output. Corporate overheads are legitimate costs of an enterprise, however, which must be recovered from all of the firm's services.

C. The FCC's Pricing Guidelines Should Encourage Fair and Economically Efficient Recovery of Shared and Common Costs.

The FCC should identify and endorse approaches that allow for equitable recovery of joint and common costs in pricing services and network elements provided under § 251. As previously stated, GTE concurs with AT&T's economists that any pricing standard for interconnection and unbundled network elements should satisfy the following criteria: (a) price should be equal to TSLRIC plus contribution to shared and common costs,[68] (b) the price of each individual unbundled network element must not exceed the stand-alone cost (SAC) for provisioning that element, and (c) the ILEC's total revenues must be sufficient to recover its total incremental, shared, and common costs.[69] The critical issue therefore is determining the most economically efficient manner for recovering shared and common costs.[70] A

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[68] The statute, of course, also provides for recovery of a reasonable profit above and beyond recovery of total costs. § 252(d)(1).

[69] *See* Baumol-Ordover-Willig Aff. at 4, n.1.

[70] Economic literature generally suggests the use of Ramsey pricing as the most efficient method for developing price sets that recover a firm's shared and common costs. *See, e.g.*, S.J. Brown and D.S.

Ramsey-like approach to overall (both wholesale and retail) pricing would recover joint and common costs in a way that is pro-competitive and economically efficient.[71]

Some parties have argued that it is inappropriate to use a Ramsey approach in a competitive environment. *See* CompTel 79-80, MCI 67; TCG 47. Yet, the Ramsey formulation is consistent with a competitive marketplace, since it compels firms to consider both customer demands for and cost characteristics of the services that are being offered. It is well established that, in a perfectly competitive market in competitive equilibrium, the price of a product will equal its marginal (incremental) cost as well as its average total cost. Under the assumptions of a perfectly competitive market, Ramsey rules will produce prices equal to marginal cost. Thus, the statement that Ramsey pricing formulations are not appropriate under competitive conditions accordingly is unfounded.

GTE is not necessarily recommending explicit use of Ramsey rules for development of unbundled network element prices, although it is possible to develop prices that approximate such rules.[72] Indeed, the Efficient Component Pricing Rule (ECPR) provides a simpler methodology for arriving at pro-competitive, efficient, and compensatory prices for unbundled network components. The ECPR not only assures efficient unbundled rates but also establishes and maintains rational relationships between retail and wholesale price sets.[73]

Sibley, THE THEORY OF PUBLIC UTILITY PRICING (Cambridge University Press, 1989) Chapter 3 (Welfare and Efficiency in Pricing).

71 *See* Affidavit of Dr. Edward C. Beauvais (Att. 3 to GTE's Comments). That is, Ramsey pricing is an appropriate means of rebalancing rates to reflect underlying costs.

72 While it is true that information on elasticity of demand is not readily available for every unbundled network element, information on the demand characteristics of many services is available, indicating the directions in which relative prices should be moved and permitting approximations to a Ramsey solution.

73 Several commenters explained that the ECPR produces a workable, economically rational basis for pricing interconnection in a changing environment. *See* Ameritech 91-93, PTG 69-70; SBC App. A. at 1-2.

Notably, the ECPR does not, as some parties allege, preserve the ILEC's "monopoly" profits and inefficiencies.[74] For example, AT&T's economists contend that "[t]he existing structure of end-user prices for local telecommunications is not appropriate as a baseline for ECPR or any other pro-competitive purpose...." This argument sets up a straw-man version of ECPR that ignores the realities of the marketplace. As GTE explained in Attachment 4 to its opening comments, when ECPR is used correctly to reflect marketplace realities, it satisfies economic efficiency:

> If an entrant's stand-alone cost ... were less than the "upper bound" prices ... that the ECPR would produce ... then the relevant opportunity cost would equal the difference between the entrant's stand-alone costs and [GTE's] incremental cost of loop service. That is, in the presence of facility-based competition, the ECPR implies that [GTE's] loop price should equal its long-run incremental cost for the loop service plus the opportunity cost as constrained by the market.[75]

In other words, the price of an unbundled network element (when common and shared costs exist) should be greater than the TSLRIC of the element but less than or equal to its SAC.

This definition of the ECPR, which is used by GTE in all its state proceedings, is consistent with the criteria set forth by AT&T's own economists for establishing the benchmark range for unbundled element prices. Specifically, "the sum of the incremental costs attributed to a requested network element (or elements) should never be allowed to exceed the stand-alone costs ... or TSLRIC of supplying those elements in the aggregate,"[76] and "[t]he competitive price for any such subcomponent must be between the component's unit long run incremental cost and SAC."[77]

The attached Affidavit of Michael J. Doane, J. Gregory Sidak, and Daniel F. Spulber further demonstrates the appropriateness of the ECPR in pricing unbundled network elements.[78] Consequently, GTE urges the FCC not to conclude that the ECPR is inconsistent with the 1996 Act, and instead, to

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74 *See* Baumol-Ordover-Willig Aff. ¶¶ 22, 23; TCG 47n.9; TWComm 57.

75 M.J Doane, J.G. Sidak, and D.F. Spulber, *An Empirical Analysis of Pricing Under Sections 251 and 252 of the Telecommunications Act of 1996*, at I-16.

76 Baumol-Ordover-Willig Aff. ¶ 38.

77 *Id.* footnote 1.

recognize that the ECPR is an acceptable means of promoting efficient entry and allowing the ILEC to recover shared and common costs.

IV. PRICING REFORM AT THE INTRASTATE AND INTERSTATE LEVELS IS ESSENTIAL.

Participants at the FCC's May 20, 1996, Economic Forum expressed consensus that rate rebalancing is economically justified and a necessary predicate to fair competition. This outcome is not surprising, given similar agreement in the record that both access reform and rationalization of intrastate rates is critical.[79] As the Oregon PSC (29) counseled, "[an] integrated approach toward access charge reform, interconnection pricing and universal service funding, particularly for high-cost rural areas ... is essential."

Growing competition, combined with the statutory requirements that ILECs provide cost-based access to unbundled networks, renders hidden support flows in local, toll and access rates absolutely untenable. GTE agrees with the Oregon PSC that a holistic approach to this problem is required. Economically efficient pricing of the array of services offered by ILECs using common plant can not be approached in piece parts. Rather, the pricing of retail network services (including local, EAS, and toll), wholesale network services, access services, and unbundled network elements should be established concurrently to reflect the integrated nature of the production process.

As GTE explained in its opening comments (73-74), the FCC and Joint Board must adopt a new model for universal service that replaces today's hidden subsidies with explicit support. To that end, GTE has proposed a pro-competitive plan for revenue-neutral rate rebalancing for interstate and intrastate services. Prompt and favorable action on GTE's proposal is clearly warranted.

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[78] *See* Attachment 3 hereto. This affidavit confirms that the ECPR, as defined in Attachment 4 to GTE's opening comments, satisfies the criteria of AT&T's own economists for efficient pricing.

[79] With respect to access reform, *see* GTE 72-73; Bell Atlantic 11-12; BellSouth 63; LDDS 79; MCI 82-83. With respect to rate rebalancing, *see* GTE 72; MFS 60; Sprint 59.

V. IXC EFFORTS TO EVADE ACCESS CHARGES MUST BE REJECTED. (*NPRM* Part II.B.2.e.(1))

By selectively reading some sections of the statute, misinterpreting the plain meaning of others, and ignoring the legislative history several IXCs claim that they are entitled to obtain cost-based originating and terminating access from ILECs under §§ 251 and 252. AT&T, for example, asserts (2n.1, emphasis in original) that § 251(g) which is entitled "Continued Enforcement of Exchange Access and Interconnection Requirements," "maintains only existing equal access and nondiscrimination requirements of the MFJ, the GTE Decree, and the Commission Rules." This contention conveniently overlooks the fact that § 251(g) also explicitly preserves rules regarding "receipt of compensation" for such access.

MCI at least admits that § 251(g) preserves the access charge rules, but argues (80) that this preservation was intended to endure only until rules are adopted under § 251(d). This interpretation would render § 251(g) unnecessary, however, since the need to preserve those rules does not arise until the new 251(d) rules are implemented. Moreover, MCI's argument is squarely at odds with the Conference Committee's statement that nothing in § 251 "is intended to affect the FCC's access charge rules." Conf. Rpt. 117; *see* GTE 76-77. MCI additionally claims, as does LDDS, that IXCs can interconnect under § 251 because they are effectively providing exchange access. MCI 77-79; LDDS 69-70. As GTE (74-76) has explained, however, the statute defines "exchange access" as the "*offering* of access," and IXCs, in their capacity as IXCs, are access customers, not access offerors.

As explained in section IV above, GTE shares the IXCs' concern that access rates are set artificially above cost, and that assessing different charges based on the identity of the interconnecting party is not enforceable or sustainable in the long term. The FCC cannot, however, allow IXCs to engage in self-help by claiming immediate rights to cost-based access under § 251. Rather, it must heed the call of a multitude of parties promptly to reform the access charge rules, in a manner that preserves universal service and assures fair access competition.

VI. CMRS PROVIDERS SHOULD NOT BE REGULATED AS LOCAL EXCHANGE CARRIERS WHEN THEY PROVIDE MOBILE SERVICES. (*NPRM* Part II.B.2.e.(2))

The National Wireless Resellers Association ("NWRA") argues (7) that "CMRS providers should be treated as LECs pursuant to section 251(b)," and made subject to the resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation requirements set forth in § 251(b). NWRA's contentions must be dismissed in light of § 3(44), which explicitly excludes commercial mobile radio services from the definition of "local exchange carrier," except to the "extent that the Commission finds that such service should be included in the definition of such term." The FCC, of course, has already found that CMRS providers should *not* be regulated as LECs for the purposes of interconnection,[80] and the 1996 Act does nothing to alter the wisdom of this conclusion. *See* Cox 49.

The standard for determining whether CMRS providers are potentially subject to regulation as LECs when providing mobile services is contained in § 332(c). That section provides that CMRS providers may be regulated as LECs only when they serve as the functional equivalent of local exchange carriers. Specifically, the CMRS carrier in question must provide service that "is a replacement for land line telephone exchange service for a substantial portion" of the state, and market conditions must fail to protect subscribers "from unjust and unreasonable rates." § 332(c)(3)(A)(ii). There is no basis for asserting that this test has been met with respect to any CMRS provider.

NWRA also argues (12-13) that under § 251(a)(1), CMRS providers, as telecommunications carriers, must allow resellers to interconnect their switches directly into CMRS networks. In the *CMRS Interconnection NPRM*, at 10713 the FCC considered and rejected this proposal, finding that such interconnection was "unnecessary" and "may impose costs on the Commission, the industry, and consumers." Moreover, the *NPRM* in this proceeding tentatively concludes that § 251(a)(1) gives

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[80] *See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Service* ("*CMRS Interconnection NPRM*," 10 FCC Rcd 10666, 10681 (1995) ("We agree with the majority of commenters who argue that it is premature, at this stage in the development of the CMRS industry, for the Commission to impose a general interstate interconnection obligation on all CMRS providers.")

telecommunications carriers the option of interconnecting either directly or indirectly, at their discretion. *NPRM* ¶ 248. This conclusion is correct, and accordingly, there is no obligation for CMRS providers to permit direct interconnection of resellers' switches.

VII. CONCLUSION

The FCC should not adopt detailed national rules for implementing §251 of the 1996 Act. Instead, it should identify acceptable but not mandatory outcomes, as discussed above and in GTE's comments.

Respectfully submitted,

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GTE'S PROPOSED GUIDELINES TO IMPLEMENT
SECTIONS 251(b) AND 251(c)

Set forth below are GTE's proposed guidelines to implement the local exchange carrier and incumbent local exchange carrier obligations contained in 47 U.S.C. " 251(b) and 251(c). Consistent with GTE's recommendation that the FCC set forth ranges of acceptable outcomes rather than adopting detailed federal rules, GTE's proposed guidelines generally track the statutory language. In the text of the *Report and Order* in this proceeding, the Commission should identify acceptable, but not exclusive, means of complying with these guidelines. GTE's suggestions for such acceptable outcomes are contained in the chart following page ii of the Summary to these Reply Comments. Acceptable outcomes for dialing parity, number administration, notice of technical changes, and access to rights of way will be specified in GTE's Reply Comments in the second stage of this proceeding, to be filed on June 3.

Part __: INTERCONNECTION OBLIGATIONS OF LOCAL EXCHANGE CARRIER AND INCUMBENT LOCAL EXCHANGE CARRIERS

__.1. General. All local exchange carriers shall comply with the duties in section __.2, and incumbent local exchange carriers shall comply with the duties in section __.3, except that local exchange carriers and incumbent local exchange carriers may enter into binding interconnection agreements without regard to the duties set forth in sections __.2 and __.3.

__.2. Interconnection Obligations of Local Exchange Carriers. Upon request, each local exchange carrier has the following duties:

(a) Resale. A local exchange carrier may not prohibit, and may not impose unreasonable restrictions or discriminatory conditions or limitations on, the resale of its telecommunications services. It shall not be unreasonable for a carrier to restrict resale to the same class of service or, with respect to intrastate services, to impose such other limitations as may be permitted or required by the State public utility commission with jurisdiction over such services.

(b) Number portability. A local exchange carrier shall provide number portability in accordance with the Commission's Report and Order in CC Docket No. 95-116 [insert Federal Register cite once Order is issued], provided that, pending implementation of a technically feasible permanent number portability solution, a State may require interim number portability through Remote Call Forwarding, Direct Inward Dialing, or other means that provide as little impairment of functioning, quality, reliability, and convenience as possible.

(c) Dialing parity. A local exchange carrier shall provide dialing parity to competing providers of telephone exchange service and telephone toll service, and shall permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays.

(d) Access to rights-of-way. A local exchange carrier shall afford competing providers of telecommunications services access to the poles, ducts, conduits, and rights-of-way under its control, on rates, terms, and conditions that are consistent with 47 U.S.C ' 224, as amended.

(e) Reciprocal compensation. A local exchange carrier shall negotiate reciprocal compensation arrangements for the transport and termination of telecommunications. The terms and conditions of arbitrated arrangements shall provide for mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier, with costs determined on the basis of the reasonable approximation of the additional costs of terminating such calls. Costs shall be approximated using a method approved or permitted by the State public utility commission with jurisdiction over the arrangement. "Bill and keep" compensation arrangements may be voluntarily agreed to by the negotiating parties, but may not be imposed by a State public utility commission unless bill and keep assures the mutual recovery of costs through the offsetting of reciprocal obligations.

(f) Good faith negotiations. An incumbent LEC and any telecommunications carrier requesting interconnection under this Part shall mutually negotiate an interconnection agreement in good faith. The

refusal of either party to participate further in negotiations, to reasonably attempt to conclude negotiations within the time frames specified in the statute, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

__.3. Additional Obligations of Incumbent Local Exchange Carriers. In addition to the duties contained in Section __.2 of the Rules, each incumbent local exchange carrier has the duties listed below:

(a) Interconnection. Upon request, an incumbent local exchange carrier shall provide interconnection for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within that local exchange carrier's network. The interconnection provided by an incumbent local exchange carrier to a requesting telecommunications carrier shall be at least equal in quality to that provided by the incumbent local exchange carrier to itself, any subsidiary, affiliate, or any other party to which the carrier provides interconnection. The rates, terms, and conditions for interconnection shall be just, reasonable, and non-discriminatory. Where interconnection is provided pursuant to an agreement reached through arbitration, rates shall be presumed to satisfy this requirement where the State public utility commission with jurisdiction over the agreement finds they are based on cost, include a reasonable profit, and are non-discriminatory. States may not utilize rate-of-return or other rate-based mechanisms to ascertain cost, but may utilize any other method that permits the incumbent carrier to recover the costs (including a reasonable profit) of providing the interconnection.

(b) Unbundled access. 1) Upon request, an incumbent local exchange carrier has the duty to provide, to any telecommunications carrier requesting interconnection under this Part for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point. Incumbent local exchange carriers must permit access at a technically feasible point to unbundled local loops, ports, facilities corresponding to the local transport elements set forth in sections 69.110, 69.111, and 69. 12 of the Rules, and signalling and data bases used in the transmission, routing, or other provisioning of a telecommunications service. A carrier requesting access to additional